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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,290	07/16/2001	Reinhard Evers	WK-188	5951
24956	7590	09/14/2004	EXAMINER	
MATTINGLY, STANGER & MALUR, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/807,290

Applicant(s)

EVERS ET AL.

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 7-16-04 and this action is final.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-7 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent No. 6,059,684 to Kodama et al.

Referring to claim 1, Kodama et al. discloses a device for removing fillets from eviscerated carcasses of poultry comprising, at least one measuring device – see figures 10a-10b, for measuring the individual dimensions of an eviscerated poultry carcass to find a starting point for loosening the fillets from the carcass, the measuring device comprising, a first element – at 60 for detecting a first body joint point, a second element – at 61, detecting a second body joint point, and a third element – at 58-59, which is mounted behind the first and second elements and consists of two detecting parts for detecting the first and second body joint points respectively –

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see for example figures 10a-10b where the third element detects the joint points via controlling items 60-61, at least one control unit – the control unit is inherent in that the device is electrically powered and automatically powered and driven, and at least one scraping device – at 63, and means connecting the measuring device via the control unit to the at least one scraping device – at 63 for the purpose of communicating, wherein the measuring device is designed for detection of body joint points, and each scraping device includes a disc-like scraping element – see for example figures 1-13b.

Referring to claim 2, Kodama et al. discloses two scraping devices – at 63, are provided – see for example figure 13a.

Referring to claim 3, Kodama et al. discloses the at least one scraping device comprises at least two disc-like scraping elements – at 63.

Referring to claim 4, Kodama et al. discloses the at least one scraping element – at 631 is of rotatable construction.

Referring to claim 5, Kodama et al. discloses the at least one scraping device includes an element for pulling back the tender sinew of the carcass– see for example figures 14-15 and column 23.

Referring to claim 6, Kodama et al. discloses the disc-like scraping elements are of pivotable construction such that the circumferential surfaces of the discs are arranged so that they can be rolled over the wishbone from the body joint of the poultry carcass – see for example figures 13a-13b.

Referring to claim 7, Kodama et al. discloses in front of the at least one scraping device in the direction of conveying is arranged at least one measuring device – see for example figures 1-2.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kodama et al. in view of U.S. Patent No. 5,697,837 to Verrijp et al. Kodama et al. discloses a device and method for removing fillets from eviscerated carcasses of poultry comprising, at least one measuring device – see figures 10a-10b, for measuring the individual dimensions of an eviscerated poultry carcass to find a starting point for loosening the fillets from the carcass, the measuring device comprising, a first element – at 60 for detecting a first body joint point from the outside of the carcass, a second element – at 61, detecting a second body joint point from the outside of the carcass where the body joint points are detected one after the other, and a third element – at 58-59, which is mounted behind the first and second elements and consists of two detecting parts for detecting the first and second body joint points respectively– see for example figures 10a-10b where the third element detects the joint points via controlling items 60-61, at least one control unit – the control unit is inherent in that the device is electrically powered and automatically

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powered and driven, and at least one scraping device – at 63, and means connecting the measuring device via the control unit to the at least one scraping device – at 63 for the purpose of communicating, wherein the measuring device is designed for detection of body joint points, and each scraping device includes a disc-like scraping element – see for example figures 1-13b.

Kodama et al. does not disclose the carcass has all of the extremities removed therefrom during fillet removal. Verrijp et al. does disclose the carcass – at 11-14, has all of the extremities removed therefrom during fillet removal – see for example figures 2a-2b and column 5 lines 15-35. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Kodama et al. and add the extremities being removed prior to removing the fillet meat of Verrijp et al., so as to affect an easier more accurate cutting of the carcass.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kodama et al. as modified by Verrijp et al. as applied to claim 11 above, and further in view of U.S. Patent No. 5,021,024 to Villemin.

Referring to claim 12, Kodama et al. as modified by Verrijp et al. does not disclose detection of the poultry carcass dimensions is effected by mechanical sensing of body joint points. Villemin et al. does disclose the detection of the carcass dimensions is effected by mechanical sensing of the body joint points – see for example figure 3 and columns 4-5.

Therefore it would have been obvious to one of ordinary skill in the art to take the method of Kodama et al. as modified by Verrijp et al. and add the mechanical sensing of Villemin, so as to make the allow for direct contact of the carcass to determine the position and dimensions of the carcass thus making the measuring more accurate.

Referring to claim 13, Kodama et al. as modified by Verrijp et al. does not disclose the two sides of the poultry carcass are processed one after the other. Villemin et al. does disclose the two sides of the poultry carcass are processed one after the other – see for example figure 3 and columns 4-5. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Kodama et al. as modified by Verrijp et al. and add the two sides of the poultry carcass processed one after the other of Villemin et al., so as to effect accurate removal of the fillets from the carcass.

#### ***Response to Arguments***

4. The rejections under 35 U.S.C. 112 2<sup>nd</sup> paragraph set forth in the previous office action dated 3-16-04 are obviated by applicant's arguments/amendments.

Regarding the prior art rejections, the Kodama et al. reference US 6059648 does disclose applicant's claimed invention except for the removal of the fillet meat prior to the removal of all extremities from the carcass. However, the removal of all extremities from the carcass constitutes functional language in an apparatus claim and it is the examiner's position that the device of Kodama et al. is capable of removing the fillet meat on a carcass whose extremities are all been removed prior to the fillet processing. Applicant provides no language in the disclosure stating the criticality of the extremities being removed from the carcass prior to the removal of the fillet meat and therefore it is deemed that the Kodama et al. reference discloses the claimed invention.

Further, applicant argues that the measuring device for measuring dimensions of the carcass and the scraping device of the Kodama et al. reference are different from the measuring device and scraping device disclosed by applicant. This may be the case but the claim language used to describe the measuring device and scraping device are not deemed to overcome the device of the Kodama et al. reference as seen in paragraphs 2-3 above. In this case it is improper to read limitations from the specification into the claims and therefore the rejections stand as set forth above.

Applicant's arguments with respect to claims 11-13 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,



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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley  
Patent Examiner  
Art Unit 3643



**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**

9/10/04